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## THE DISTRIBUTION OF FUNCTIONS BETWEEN LOCAL AND STATE REGULATION

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The proper scope of local and state regulation of municipal utilities cannot be stated in a few generalizations. All will doubtless agree that as long as public utilities are operated by private corporations, there must be some form of public regulation and control; that local authorities should administer their own affairs; and that the state has broad police powers which cannot be taken from it. But an exact delimitation of the precise functions which should be exercised by private corporations, by local authorities and by the state is not so easily stated.

Every attempt at a practical solution of this problem must recognize certain facts. First, every generation is apt to have its own ideas of the scope and distribution of governmental powers. In certain directions, the state has never been more socialistic than it is today. In others, the individual has greater freedom than he has ever before enjoyed.

Second, economic and social conditions are shifting constantly. The luxuries of today are the necessities of tomorrow. The complexity of modern life has created a dependence upon community action or coöperation in some form which the political theories of the past were not obliged to recognize.

Third, there has been a steady expansion of the field of operation of a single utility. When the town or city was not so populous but that a single spring or well would supply the entire population, the apportionment of functions between city and state was comparatively simple. But with electric lines encircling several counties, with water supplies brought from long distances to supply our large cities, with natural gas mains extending from one end of the state to the other, and with railroads and telephone systems covering several states, the problem assumes a complexity never before realized. This is not a temporary condition, but one which will continue and increase in importance as decade succeeds decade, and the enlargement of the local political sub-division will probably

not keep pace with this development unless the state is made the unit of regulation, particularly in the smaller states of the east.

Fourth, effective regulation of large utilities is difficult and expensive. The town or village or even the county is not ordinarily able to cope with a large corporation operating in several counties. The maintenance of a proper engineering, statistical and accounting staff in each small subdivision would impose a burden too heavy to be borne. The duplication of effort and the conflict of coördinate authorities would cause waste, inefficiency and ineffective regulation.

Over-estimating the importance of these facts, there are those who urge that all control over public service corporations be transferred from local authorities to a state board, that even our great cities which have a larger population than some states be ousted from all supervision over their utilities, and that even the franchise granting function be taken from them. Between this extreme and complete local regulation, there is a middle ground, for certain functions can more effectively be exercised by a state board and others more wisely administered by local authorities. An examination of the more important functions of governmental regulation will indicate where the line should be drawn.

### *Incorporation and Franchises*

The formation of the corporation itself naturally comes first. This is properly a state function. The state confers powers which no individual possesses, and the methods and conditions under which private corporations may be formed and these unusual powers exercised should be fixed by the state and not by municipal or other local authorities. Before a public utility corporation may operate, however, it is generally necessary to secure additional rights. The right to exist as a corporate entity does not ordinarily include the right to use the streets and public highways. A special franchise must be obtained before operations are begun, and it is suggested in certain quarters that this franchise should be granted by a state board which should determine not only whether a franchise should be granted but also the terms and conditions of such franchise.<sup>1</sup>

<sup>1</sup> The bill recently prepared by a council of the National Civic Federation for the regulation of public utilities permits any private corporation now operating a public utility to obtain a *new* franchise without the consent

This policy, in my opinion, is entirely wrong. Would it not be as unjust and improper for a state board to fix the terms and conditions upon which a private corporation should use city property without municipal consent as it would be for a municipality to use private property without the consent of the owner? Is it proper that a state board sitting at Harrisburg should determine whether a street railway should be operated in Broad Street, Philadelphia? Would the citizens of New York permit a state board at Albany to decide that a street car line may be operated on Riverside Drive or Fifth Avenue and terms upon which the grant may be made? The citizens of Chicago a few years ago threatened to suspend certain officials from the lamp-posts for less flagrant violations of the principle of home rule.

Why should state authorities be given such power? It is suggested by those who are so anxious to escape from dealing with local authorities that city councils are corrupt, that political considerations often interfere with justice and that corporations have been forced to accept harsh and unfair terms. They assert that a state commission is not so easily influenced by local sentiment and public opinion, and that it is more likely to do justice.

Have the public service commissions a monopoly of the honesty, virtue and wisdom in every state? Are state boards so familiar with the needs of every community and so wise in dispensing the proper remedy that they should be substituted for local authorities? Is there virtue to be found in Harrisburg and Albany but not in Philadelphia or New York? The whole idea smacks of bureaucratic centralization, of foreign political theories and of the destruction of home rule. Further, many municipalities have had experience with this plan in one form or another. Some of the worst chapters in the history of public utilities relate to the granting of rights to use city streets by state authorities. If municipal authorities have been corrupt and if the power to grant or withhold franchises has been abused, the remedy is not state centralization but reform of local conditions, and we have progressed too far in this direction to take a backward step.

of the municipality or the abutting property owners. All it has to do, is to file a document, and *ipso facto*, it gets a new franchise of general application. Such a provision is in many states unconstitutional.

*Control of Securities*

Control over the issuance of securities by public service corporations should be lodged in the state and not in the local authorities. Whether such control be restricted to the enactment of laws specifying in general terms how securities shall be issued and the various steps which must be taken prior to their issuance, or extended to include full publicity regarding all financial matters or capped with a comprehensive plan for administrative regulation, the plan should be state-wide and not subject to local variations. One needs only to consider momentarily what would happen if a corporation could issue securities only after approval by every local authority in whose territory it was operating had been secured. In exceptional instances, local control might work without difficulty, but ordinarily there would be such conflict and confusion that it would prove impracticable.

As the corporation is chartered by the state and as it must act as a unit, and as securities are issued not by an entity having a local situs but having a state-wide existence, it is obvious that from a logical and from a practical point of view the regulation of securities is a function belonging to a central authority whether exercised by state legislature or by an administrative board.

*Accounts and Reports*

Supervision of accounts and the filing of reports are also matters which should be under state supervision for similar reasons. Confusion and conflict would result from local regulation, and there would probably be such differences in the system of accounts adopted by the numerous local authorities that comparison would be extremely difficult and the use of accounting and statistical data greatly hindered.

In several states municipal utilities are subject to state supervision in respect to accounting and statistical matters, similar systems being established for local authorities and private corporations. Objections have been made to this plan, but I see no reason why municipalities should not ordinarily be required to have uniform systems of accounts and records, so that the facts may be known to the citizens and comparisons made.

*Rate Regulation*

The power to review rates and to determine what charges shall be made is the function which has attracted most attention. The sovereign power of the state in this respect has long been recognized. The question with which we are now concerned is whether this power should be lodged with local or with state authorities. Admittedly, the regulation of railroad rates cannot wisely be entrusted to local authorities. The state is certainly the smallest unit which should exercise this function, and it has been found necessary to confer certain powers upon a federal board to secure adequate supervision of interstate commerce. As this discussion relates to municipal utilities, railroads are excluded, but there is considerable similarity between railroad rates and street railway and interurban rates. These utilities often extend through several jurisdictions, and similar difficulties attach to local regulation of their rates as attach to state regulation of railroad rates. Gas works are more frequently confined to single areas. Hence, while it is not impossible for municipalities to regulate rates and while there have been many instances where this power has been wisely and efficiently exercised by municipalities, it will be found increasingly difficult; and if it is not now, it will ultimately be necessary in most instances for the state authority to control rate regulation. In the meantime, where utilities are purely local, where cities are regulating rates effectively, and while state commissions are perfecting their methods and organization, it is not advisable to deprive all localities and particularly the large cities of all control over rates. It is impossible, however, for small localities to perform efficiently this function. Rate regulation involves considerable expense and the maintenance of a staff of experts to investigate and report the essential engineering, statistical and accounting data necessary to a fair solution of the problem. Small cities, towns and villages do not have the necessary organization, and the expense of maintenance is so great as to make it almost prohibitive. States and large cities can bear the expense without an undue burden upon the public.

*Control of Municipal Rates*

There are extremists who advocate that state commissions should be given power to determine what rates should be charged by municipalities operating their own utilities and what principles should be followed in municipal rate-making. This is another radical infringement of the home rule principle and would virtually prevent a municipality from dealing with its utilities upon a public health or common good basis and require them to raise funds as prescribed by a state board. To illustrate: It has not been many years since private companies maintained sewerage systems in southern cities. From time to time these systems have been acquired by municipalities, and instead of charging according to the service rendered, the cost of maintenance has been included in the annual budget and raised by general taxation. If state regulation of all municipal utilities is to be carried as far as suggested, it will mean that municipalities may not defray such expenses by general taxation, by assessments upon property benefited or in some other way as they desire, but that revenues must be raised as a state commission shall dictate.

Many municipalities raise a considerable part of the cost of operating water works by general taxation, upon the ground that an adequate water supply is necessary to protect the health of the city. If the extreme of state regulation were to be adopted, a state board could rule that this is improper and that those using water must pay according to the number of faucets or bathtubs or gallons of water used. The people of the community might prefer another method, but their wishes would avail them nothing. Municipal home rule would become a myth, and towns, villages and cities would be ruled from the state capital and by persons not directly responsible to the people affected. Few things would be more destructive of civic patriotism and good government.

*Service Matters*

The term "service" has a very broad meaning. It covers a multitude of matters ranging from the number of cars operated upon a street railway to the efficiency of lamps supplied by electric companies and the pressure under which gas is distributed. These functions affect not only the commercial status of a community but also its health, convenience and safety. Until recently munici-

pal regulation had a much wider scope than state supervision, but since the creation of state commissions with powers over service matters, there has been considerable discussion as to where the municipality should end and the state begin. As yet no clear line of demarcation has been evolved. Probably the most practicable plan would be for local authorities to continue to exercise the control now vested in them by statutes and city charters, and in case of conflict between different local regulations or between local and state regulations for the action of the state regulatory body to be controlling. In this field, state commissions should proceed slowly, and they should not interfere with local regulations unless such interference is quite necessary. Doubtless, experience will indicate what matters are local and what matters can best be dealt with by a state board. Until this has been done, state commissions should give local authorities every chance to work out their own salvation.